American Red Cross Blood Services Greater Chesapeake and Potomac Region and International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 5-RC-14295

October 21, 1996

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

The National Labor Relations Board, by a three-member panel, has considered objections to an election conducted by mail with ballots returned by March 18, 1996. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 41 for and 51 against the Petitioner, with 9 void and 14 challenged ballots. The challenged ballots were resolved by the parties, but no revised tally has issued.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations as explained below, and finds that the election must be set aside and a new election held.¹

On March 1, 1996,² the Regional Office mailed election ballots to the Employer's employees. Subsequently, on March 4, the Employer conducted two "captive audience" meetings among its employees. The hearing officer found that the Employer interfered with the election by violating the *Peerless Plywood Co.*, 107 NLRB 427 (1953), prohibition against employers and unions "making election speeches on company time to massed assemblies of employees

² All dates are in 1996 unless otherwise indicated.

within 24 hours before the scheduled time for conducting an election."

The Employer asserts that the meetings it held on March 4 did not violate the *Peerless Plywood* rule because the Regional Office failed to provide it with formal notice of the date the ballots would be mailed out as required by the rule set forth in *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959).

In Oregon Washington, the Board found that the employer did not engage in objectionable conduct by making an election speech on company time because the parties had not been given written notice "informing them as to the time and date when the ballots would be mailed by the Regional Office."

In the instant case, the parties negotiated a Stipulated Election Agreement that was approved by the Regional Director, and signed on January 31. That Agreement clearly and affirmatively stated that the ballots would be mailed on March 1. On the same day the Agreement was signed, the Employer addressed a memorandum to its unit employees informing them when and how the mail ballot election would be conducted. The memorandum explicitly stated, "The voting process will begin on March 1, 1996, and continue until March 18, 1996." Thus, the Employer cannot now be heard to complain that it did not receive written notice from the Region setting forth the date and time when the ballots would be dispatched to the voters and the terminal time and date when the ballots should be returned. The Stipulated Election Agreement, binding on all parties, provided sufficient written notice to the parties about the election.

Accordingly, we do not agree with the Employer that the absence of a letter giving 24-hour notice of the mailing of the ballots means that the *Peerless Plywood* period had not yet begun on March 4.

[Direction of Second Election omitted from publication.]

¹ The hearing officer assumed that the Petitioner lost the first election. No party contests the hearing officer's assumption.